

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NATHANIEL CAYLOR, and (minor) W.C.,

Plaintiff,

v.

THE CITY OF SEATTLE; and OFFICER
EUGENE SCHUBECK, et al.,

Defendants.

No. 2:11-cv-1217 RAJ

PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANT LESLIE'S
MOTION FOR STAY

Defendant Leslie has filed a separate motion to stay the trial pending his interlocutory appeal of the Court's rulings denying his motion for qualified immunity from plaintiff Nathaniel Caylor's Fourth Amendment claims. Dkt. 137. For the same reasons set forth in their opposition to the similar motion filed by defendants Schubeck and the City of Seattle (Dkt. 136), plaintiffs oppose this motion.

Defendant Leslie's motion provides even less reason to find his appeal is not frivolous than his codefendants. He cites cases only for the most general propositions regarding qualified immunity. Dkt. 137 at 2-3. He says nothing about the cases that the Court cited, or the logic of the Court's opinion, rejecting his qualified immunity claim.¹

¹"A jury could reasonably conclude that Ofc. Leslie encouraged Ofc. Schubeck to shoot. A jury could hardly help but conclude, however, that Ofc. Schubeck did nothing to intervene. And a jury could reject Ofc. Leslie's contention that he did not intervene because he did not believe that Ofc. Schubeck would shoot. Because the circumstances known to Ofc. Leslie did not justify the use of deadly force, and because Ofc. Schubeck's announcement of his intent to shoot offered Ofc. Leslie ample time to intercede, a jury could find that he is also liable for the use of excessive force. The duty to intercede to prevent constitutional violations was established at the time of the shooting. Ofc. Schubeck is therefore not entitled to qualified immunity for his decision not to intercede." Dkt. 96 at 24-25.

PLAINTIFFS' OPPOSITION TO DEFENDANT LESLIE'S
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CERTIFICATE OF SERVICE

I certify that on the date noted below I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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DATED this 21st day of May, 2013, at Seattle, Washington.

s/Terri Flink

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